



Albania Registration Organizational Improvement Project



Final Report

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Note: The views expressed in the following report are those of the authors and do not necessarily reflect the opinions or policies of the U.S. government.

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GLOSSARY

AFCR: Albanian Foundation for Conflict Resolution.

Cadastre: A public record, survey, or map of the value, extent, and ownership of land as a basis of taxation. A cadastral zone is a defined area with clear boundaries subject to systematic First Registration.

Hypotek: The registry office and system of recording deeds and land-related transactions, to be replaced by the IPRS.

IPRS: Immovable Property Registration System. Can also refer to the Central or District Offices of the IPRS.

Kartela: The Certificate of Registration on which all pertinent information is written initially when entering a new property into the IPRS. Subsequent transactions affecting that property will be recorded on this *kartela*. The primary document of record in a property-based land registration system.

PHARE: The PHARE program is one of the three pre-accession instruments financed by the European Union to assist the applicant countries of Central and Eastern Europe in their preparations for joining the European Union. PHARE was the EU funding mechanism to support systematic First Registration of primarily agricultural land in the 10 years prior to the ROI project.

PMU: The Project Management Unit. A common name that may refer to more than one institution. In this report, it refers exclusively to that entity responsible to the Ministry of Agriculture and Food in Albania, and responsible for First Registration activities funded by the EU and USAID prior to the ROI project.

ROI: The Registration Organizational Improvement Project, funded by USAID/Albania and administered by ARD, Inc. The subject of this Final Report.

Tapis: Land Use Certificates issued by District Land Commissions to privatize property ownership.

Truall: A building site or lot, excluding the building itself. The land on which a building is constructed, as a property object separate from the building.

PART I. BACKGROUND

USAID DESIGNED THE REGISTRATION ORGANIZATIONAL IMPROVEMENT (ROI) PROJECT TO continue assistance to the Government of Albania for systemic First Registration of private and state property rights in land, buildings, apartments, and commercial spaces. ROI began in 2002 as a continuation of earlier projects of immovable property registration, assisted by USAID and the European Union (PHARE). The purposes and assumptions, first set in 1993, remained the same. In that year, the Council of Ministers of Albania declared its intention to create the Immovable Property Registry System (IPRS) in order to support environmentally and socially sustainable property markets.¹ To accomplish this purpose, they designed the IPRS to become a modern, property-unit based system, replacing the urban *hypotek* and rural cadastre. The *hypotek* and rural cadastre offices served as archives of property-related documents but did not link the geographic and legal data. This transformation requires the systematic integration of the legal documents (defining ownership and subordinate rights) with the maps and survey data (fixing the location and boundaries of each property object).

During the 10 years before the start of ROI, a project management unit (PMU), working under the Ministry of Agriculture and Food and supported with donor funds, carried out systematic First Registration in rural, agricultural cadastre zones. The PMU only registered apartments in urban zones. ROI initiated systematic First Registration of urban land parcels and buildings, then shifted rural focus to zones with economic development priority. In broad terms, the project's goals were:

- To increase the number of property units registered in the IPRS.
- To improve the quality of the legal documentation and geographic information.
- To confront the complex problems of property registration in center city and peripheral urban zones.
- To devise and implement a new method of performance-based contracting for the technical work of systematic First Registration.
- To develop new methods for management and operation of the IPRS, based on the experience of systematic First Registration.

These goals of ROI reflected the two basic assumptions that had guided the design of the IPRS in 1993. First, the local professionals and international consultants believed that a property-based registry, linking geographic and legal data, was the most efficient and legally sound method for protecting ownership rights in immovable property. They were convinced that only a property-based registry would achieve security of title and provide a guarantee for each investor that the person dealing with a particular property was the “true owner,” with full authority to dispose of the property rights. Without this guarantee, markets in immovable property would be hindered and distorted, and mortgage finance would be impossible. Second, the IPRS designers believed that, having taken the initial legislative steps to reestablish private

¹ Council of Ministers Decision No. 505 of 26 October 1993, “On Approval of the Action Plan of the Immovable Property Registry System and the Programs Related to the Future Market of Immovable Property.”

property rights, Albania's government leadership was committed to continuing the transition toward a full system of civil law and market relations.

ROI was to help the IPRS achieve "security of title" by precisely defining the ownership and subordinate rights in every property unit subject to systematic First Registration. The IPRS would guarantee this information and it would be legally binding in all subsequent civil law actions and transactions. The process would, as a result, remove from legal significance any information about property transactions that was not properly registered. ROI expected to see and support an increasing reliance on the IPRS registry by users for their civil law actions and market transactions.

PART 2. TECHNICAL APPROACH

The earlier donor-assisted First Registration projects achieved a certain level of success by bringing into the IPRS over 2 million rural agricultural and urban apartment properties. However, later evaluations determined that there were more than 300,000 errors in the registry data. The evaluations also concluded that there had been little meaningful improvement in market activity and civil law protection of property rights.² The registry data in many zones had not been incorporated into the routine administrative process and were not used or updated by property owners. Audits, conducted in 2000 and 2001, revealed significant flaws in the financial and management structures of the PMU responsible for First Registration.³ First Registration had not achieved a cost-effective process or a satisfactory quality of data output.

Most of the difficulties encountered in the earlier projects resulted from ineffective contracting and financing mechanisms as well as the inadequate management capabilities of the PMU. The Council of Minister had organized this institution in 1993, prior to the creation of the IPRS, to supervise systematic First Registration and channel international funds into this activity.⁴ It was institutionally separate from, and preceded, the IPRS. It was a quasi-governmental enterprise; reflecting the rural orientation of land reform, it was subordinated to the Ministry of Agriculture and Food. International funding flowed into the PMU from two sources—USAID and the European Union (EU)—complicating its accounting procedures. The PMU's subcontracting approach split the work of First Registration into separate technical tasks. PMU managers assigned each task to a different subcontractor or unit of the PMU staff. Thus, responsibilities and financial accounting were fragmented further. The donors advanced funds to the PMU before work was performed. Payments were calculated on time and effort, not on the completion or quality of work. Map and survey work proceeded without regard to the review of legal documents. This resulted in incomplete linkage between properties and legal documents: many property units drawn on the maps later were found to have no legal documentation, and vice versa. The PMU was unable to hold the teams accountable for this linkage or for the accuracy required to achieve it.

To remedy these shortcomings, ARD, Inc. developed and implemented a performance-based, contractual relationship with the local private professional firms performing the tasks of First Registration. Under each "global contract," a single professional enterprise was responsible for all the tasks of systematic First Registration in a cadastre zone. The global contract ensured that tasks were properly sequenced and coordinated and that payments were based on *performance*, determined by technical monitoring and field checking.

² Report of the Working Group for the Restructuring of the PMU, February 2002.

³ Ernst and Young Albania, *Management and Financial Audit of the First Registration Project Management Unit on Funds Provided by USAID*, 14 January 2002; KPMG Albania, Review of the 14 January 2002 Auditor's report *Management and Financial Audit of the PMU*, 29 March 2002; Deloitte and Touche, Management and Financial Audit Reports of the European Union Support to the Project Management Unit for the Immoveable Property Registry System, project numbers AL/97/07/01, AL 98/05/01, 3 June 2002.

⁴ Decision of the Council of Ministers no. 81 of 26 February 1993 "On Creation of the Work Coordinating Group for the Immoveable Property Registry System.

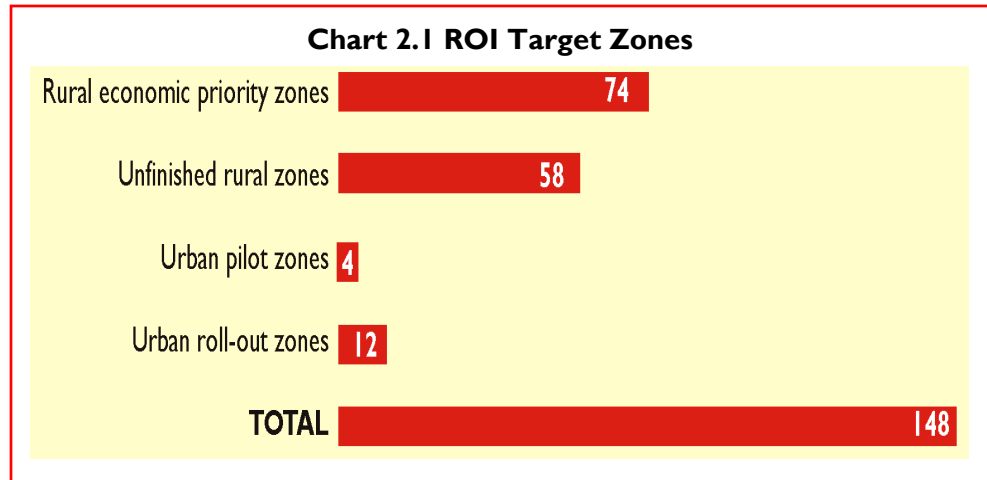
In its relationship with the government counterparts, ROI initially separated the work between urban and rural zones. Urban First Registration was under the supervision of the IPRS under a partnership agreement and work plan. Subordinate to these, ROI tendered the global contracts with the private registration service firms. The partnership agreement was supplemented by a service contract with the IPRS that identified three “pilot zones” as the first areas for urban systematic First Registration. Later, the Vlora Energy Industrial Park was added as a fourth pilot zone. ROI agreed to reimburse the IPRS, during a limited time, for work by its staff in carrying out “sporadic” First Registrations—that is, provisional inclusion of single, specific properties (not whole zones) in the new IPRS, when transactions were received for registration.⁵ These reimbursement payments were not made, however, because the IPRS had no authority under the law to accept the funds. The agreement concerning sporadic registrations ended on December 31, 2003. In a revised service contract in 2004, systematic First Registration began in 12 “roll-out” urban zones and the reimbursement payment was recast as an in-kind contribution, with a value equivalent to the level of IPRS support services to First Registration in these zones.

For the rural zones, the continuation of First Registration presented a different problem. The audits of the PMU in 2001 revealed that many subcontractors had not been paid for work in 316 rural zones. ARD was prohibited by the terms of its contract with USAID from paying for any work initiated prior to its own contract for ROI. This rendered the PMU insolvent, preventing it from taking the responsibility of managing any further work. After protracted negotiations, ARD and USAID agreed to sever the responsibility for the zones burdened by unpaid debts and to allow a restructured PMU to manage First Registration in 74 new “economic priority” rural zones. The Ministry of Agriculture and Food accepted responsibility for paying PMU’s debts. Work also would continue in 150 other unfinished rural zones, not burdened by unpaid debt but where the PMU initiated work prior to ROI. This agreement became the basis of a service contract between ARD and the PMU, signed on December 17, 2002, and set to expire on December 31, 2003. In general, the PMU would provide contract tendering and management services for rural, systematic First Registration activities, all of which should conclude within a year.

The ARD/PMU service contract provided for the tender of global contracts for the work in 74 economic priority rural zones to private firms. These would be direct contracts with payments to be made for the work only after performance verification and without any funds passing through the PMU. Separate payments were to be made to the PMU for its management services. The 150 unfinished zones were to continue under the previous arrangement, with the PMU in control. By December 31, 2003, when the ARD/PMU contract ended, little progress had been made and the contract with the PMU was not extended or renewed. The 74 economic priority zones continued under their global contracts directly with ARD. Of the 150 unfinished zones, where the PMU initiated work prior to ROI, only 58 had geographic and legal data sets of acceptable quality. ROI completed systematic First Registration work in these 58 zones.

⁵ Sporadic registration resulted in a “provisional” certificate of ownership, subject to finalization during the legally prescribed procedure of systematic First Registration for the entire cadastre zone.

On January 1, 2004, the ROI assumed full contracting management responsibility for rural work, which continued through the completion of the project. First Registration work proceeded in the rural and urban zones, as shown in Chart 2-1.

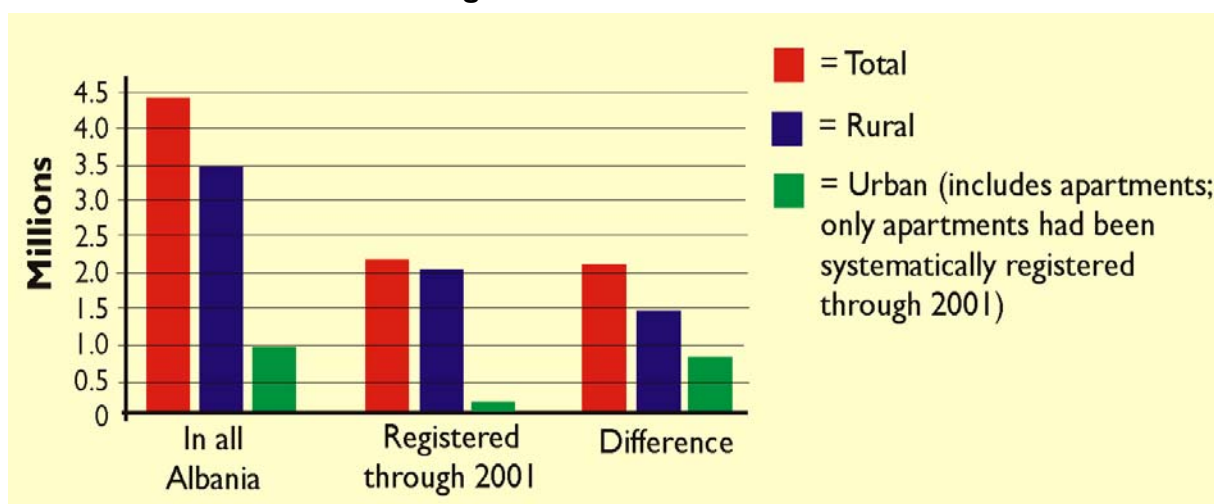


PART 3. RESULTS

3.1 NUMBER OF PROPERTIES REGISTERED

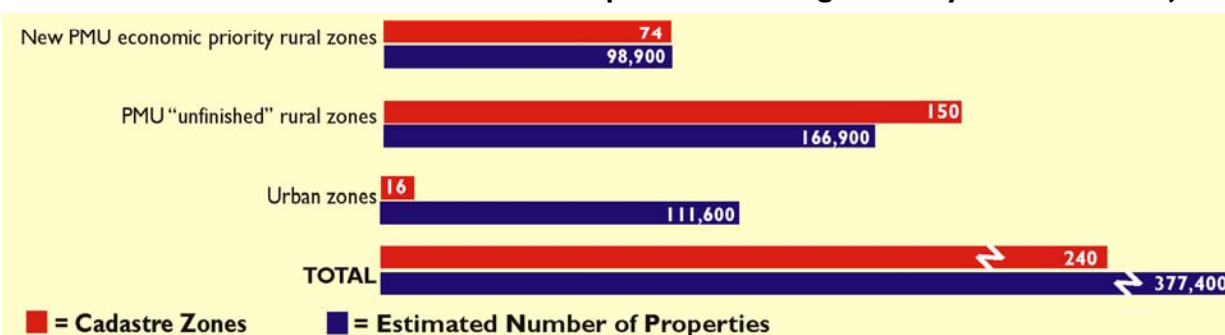
With donor assistance, which ended in 2001, the PMU claimed to have registered over 2 million properties out of more than 4 million property units in all of Albania. Most of the registered properties were located in 2,263 rural cadastre zones, out of 3,064 zones in all of Albania (including urban zones). These zones were considered completed. The PMU also registered urban apartment units, but these urban zones would not be complete until all the other properties (land parcels and buildings) could undergo systematic First Registration (see Chart 3.1).

Chart 3.1 First Registration Status at Start of ROI in 2002



At the start of 2003, ROI set out to conduct systematic First Registration, through its service contract with the PMU, in the economic priority rural zones and in selected unfinished rural zones, which had begun under the previous projects and were unburdened by debts. Through its service contract with the IPRS, ROI set out to initiate systematic First Registration in four pilot urban zones and, later, additional urban roll-out zones. Under this scenario, the project expected to register over 300,000 properties. USAID, in consultation with a steering committee, set the zones and priorities. Chart 3.2 shows the number of cadastre zones and estimated number of properties ROI intended to register by the end of the project.

Chart 3.2 Cadastre Zones and Estimated Properties to Be Registered by End of ROI Project



ROI made three structural changes to this plan during implementation. First, in 14 of the PMU economic priority rural zones, with about 25,000 properties, ROI suspended activity because the state agencies could not supply the documents defining land ownership (in spite of the PMU's assurances to the contrary). Second, the PMU was able only partially to meet its contractual commitments to ARD in only 58 of their 150 *unfinished* rural zones, forcing ROI to drop 92 of these rural zones. Third, in some urban zones the field surveys revealed that the volume of properties was lower than the IPRS initial estimate. This made it possible to add a component of work to update apartment properties (registering new units and changes that had occurred since previous First Registration). Chart 3.3 shows the final tally of zones and properties encompassed by the ROI.

Chart 3.3 Cadastre Zones and Estimated Properties Registered by End of ROI Project (Final)



*ROI financed and supported work, through the PMU, up to the public display for these zones. When the PMU contract expired at the end of 2003, responsibility for concluding the public display period and final registration in these 58 rural zones reverted to the PMU, under the Ministry of Agriculture and Food.

3.2 CONTRACTING AND MONITORING

The use of the global contract, the process of open tenders, and the system of quality control management have been ROI's most significant accomplishments in improving the transparency, efficiency and effectiveness of systematic First Registration. These mechanisms replaced the fragmented subcontracting and management of the PMU. Under the law and regulations, the process of systematic First Registration comprised five stages in each cadastre zone (see box).

Under the global contract method, ROI awarded a single contract, after open tender, to one enterprise to carry out all of these stages of First Registration in one or more selected cadastre zones. ROI drew up the standards for prequalification of private firms to compete for the First Registration contracts. The prequalification tender drew a response from 65 persons and entities, which ranged from single proprietors to several well-established survey and mapping firms. These firms had to expand their expertise to include not only the geographic measurement and mapping skills, but also the skills of legal document review and preparation. Of the group, 46 firms prequalified for work in rural zones and 17 prequalified for urban zones. In addition, ROI recognized 19 individual professionals who had presented themselves as sole proprietors, as qualified to work under the management of the pre-approved firms. The tendering process, therefore, helped to strengthen the institutional structure of these professions in the private sector.

Five Stages of Systematic First Registration

Stage 1. Assemble all the pertinent geographic survey materials, maps, and the legal documents defining property rights from the archives of the state and municipalities, and make them available to the specialists carrying out systematic First Registration.

Stage 2. Conduct field surveys to determine the actual situation of use and development, to update the base maps and survey documents, and to prepare the draft Registry Index Maps.

Stage 3. Compare and reconcile with each other and with the field surveys all the documents defining parcels of land, buildings, and premises as legal objects (assembled from the archives and supplied by citizens). This procedure is done to prepare the registry *kartelas* (property registration certificates) containing the legally significant statements of property rights and restrictions for each property.

Stage 4. In each zone, place on public display for 90 days the draft Registry Index Maps and lists of the owners of all property objects, allowing citizens to check their properties and point out any errors or disputes. Make corrections and mediate disputes during this time.

Stage 5. After public display, correct the maps and *kartelas*; prepare, print, and deliver the final maps and *kartelas* to the district registrar, who approves them.



After prequalification, ROI tendered the global subcontracts for logical groups of cadastre zones in rural regions and individual urban zones. ROI based the competition for each subcontract on the bidders' offers of the best price and best work plan, given the calculation of the volume and types of properties in the zone. The subcontracts, when awarded, contained clauses that differed significantly from those of the previous projects:

- No payments were to be made in advance.
- Responsibility for all tasks of First Registration in each zone rested with the single subcontracted firm.
- The stages of work for First Registration were described on both a task basis and a measurable and verifiable performance basis.
- Payments were made on a per-property basis only, making it a strictly performance-based contract.
- Each stage of the work was subject to monitoring to determine that the tasks were completed, in accordance with regulations, and the quality of the work was satisfactory.
- ROI made payments for each stage only when the monitors certified that the tasks were complete and the work met the standards of quality.
- ROI withheld the final payment of 30% of the contract price until the final stage was completed and the IPRS certified the acceptability of the work.

The global contract, therefore, introduced into Albanian professional practice effective, modern methods of performance-based contracting, project management, and financial accounting. By combining all the tasks, it helped to correct the previous imbalance, in which the

surveying and mapping took priority over the review and interpretation of legal documentation, and the careful recording of the property rights. In a jurisdiction like Albania, which had a weak tradition of civil law and strong history of administrative command, the rebalance of these two aspects of the registry was an important contribution to the overall system.

To ensure quality control, ROI also built into the process of systematic First Registration a strong mechanism of monitoring by four institutions. First, a separately contracted firm, Geo-Consulting, monitored the technical processes of field survey, map making, and computerized data assembly. In particular, Geo-Consulting ensured the linkage between geographic data and legal documentation and the accuracy of spatial measurements. Second, the Albanian Foundation for Conflict Resolution (AFCR) monitored the relations of the subcontractor with the citizens. The AFCR made visits to homes to explain the process and its benefits and to ensure that the citizens were ready to provide documentation and allow access for the surveyors. The AFCR made sure that the subcontractors properly conducted the public displays and responded to all citizen requests and notices about errors and disputes. Third, ROI fielded teams of technical staff, with skills in both legal issues and surveying/mapping, to monitor the work of the subcontractors and to monitor the monitors of Geo-Consulting and the AFCR. Fourth, most of the district registry offices created monitoring teams of their own to check the field work and the preparation of the manual kartelas (there was limited capacity in the district offices to check the digital databases). The central office of the IPRS assigned technical staff to conduct periodic independent monitoring.

The ROI process required each district registrar to sign off on each stage of the work, after presentation of the reports of the monitoring units. This process of steady monitoring and oversight helped to ensure an efficient systematic First Registration because most errors and misinterpretations were caught early, before they “infected” large numbers of kartelas or distorted the calibration of large areas on the maps.

3.3 QUALITY CONTROL

From a technical point of view, systematic First Registration under ROI has achieved the highest level of accuracy and legal sufficiency yet seen in Albania. This was the result of several factors:

- The careful identification of well-managed professional firms through the process of pre-qualification and open, competitive bidding.
- The awarding of contracts based on the best technical qualifications as well as price.
- Ongoing support by ROI professionals to improve the management procedures, accounting, and technical capabilities of the subcontractor firms.
- The processes of technical monitoring using the specially designed software, which ensured precise linkage of the legal documentation to the geographic data and which exposed overlaps and other errors in measurement.
- The process of monitoring kartela preparation, which ensured accurate application and consistent interpretation of the laws, regulations, and instructions.

- The processes of outreach to citizens and juridical persons, through the AFCR and the First Registration subcontractors, which induced property owners to bring forward their documentation and participate in the public displays.
- The activities of monitoring, conducted by the district registry offices and the central office of the IPRS.

In the processes of monitoring, ROI checked the field surveys for errors using a sampling technique in which ROI remeasured representative properties, randomly selected. Similarly, to determine the sufficiency of the legal data, ROI rechecked random samples of kartelas against the original documentation. Another method of quality control involved the monitoring of citizen participation. At each public display, the AFCR or subcontractor representatives kept a log-book of citizen inquiries, noting the names of the persons making inquiry and the date, time, and the content of their questions. They also logged the follow-up response, including whether their problem could be solved or would require further mediation or legal process. The AFCR monitored these logs and intervened in the cases needing assistance. At the end of public display, the AFCR also surveyed a random sample of citizens in the zone to determine whether they took part in the public display and were satisfied with the accuracy of the registration of their properties.



Technical accuracy was very high in all completed zones as a result of the processes of technical measuring, monitoring, rechecking, and follow-up. As detailed below, the remaining problems with the registry data have been related to unresolved issues of law and policy.

3.4 THE IPRS

ROI worked with the central office of the IPRS to create and strengthen several technical regulations and standards related to First Registration. However, initiatives to improve the legal and institutional status of the IPRS as a whole and its management in the central office met with very limited success.

ROI established a technical working group of specialists from the IPRS, ROI, and representatives of the subcontracted firms. This group produced three documents, which the chief registrar officially issued to supplement its regulations of 1999, including:

- Revised Instructions for First Registration in Urban Zones, adopted November 2002 (revising the Instructions of 1999).
- The *Monitoring Plan for First Registration Activities*, dated December 2002, which spelled out the ROI system of performance monitoring, as described above.
- The *Program on the Organization of Public Information on Registration of Immovable Properties*, dated December 2002, which provided the details for publicity about First Registration and other outreach activities.

ROI, IPRS, and AFCR personnel produced the guideline document for the conduct of public display and mediation in First Registration, entitled *Training Manual for Field Mediation Process and Monitoring of Public Display of Immovable Properties in First Registration*, dated 2003. This body of documentation provided comprehensive guidance to urban systematic First Registration.

ROI intended for the technical working group to continue to address problems that arose during implementation of systematic First Registration, especially in urban areas. However, this was not possible. First, delays in starting the work in the pilot urban zones made it necessary to begin in the roll-out urban zones before the technical working group could analyze experiences in the pilots. Second, the expiration of the PMU contract required ROI technical specialists to restructure the project over a period of some months. When the specialists were able to focus again on the technical issues in late spring 2004, there was insufficient time to obtain agreement on the proposed solutions. These included, in particular, issues related to the presentation of information about “illegal” structures and overlapping land parcel boundaries. These issues did not prevent the acceptance of the maps and legal documentation in any zone; nevertheless, they have been recognized as weaknesses for future data maintenance.

ROI analyzed the management structure and operations of the IPRS with the intent to work out a new business plan for increased efficiency. The work product of this activity was entitled *Cost Analysis of the Volume of Work of the Registration Office in the Urban Zones*, December 2002.

This document became a supplement to the *IPRS Draft Business Plan Survey* of 2001. On the basis of the two reports, the IPRS concluded that its structure as a budget-financed agency, subordinate to the Council of Ministers, presented strong obstacles to its mission of efficient service. The draft business plan, therefore, outlined a new structure for the IPRS. It would be a quasi-governmental organization, self-financed by retaining all of the revenue from its fees, and fully in control of its employee relations and salary levels, separate from the civil service system. This approach is modeled on the successful Central Bank of Albania.

To achieve this independent status, the IPRS needed legislation to amend or replace the existing law (no. 7843) “On Immovable Property Registration.” ROI helped the IPRS draft proposed amendments, which were submitted through the Council of Ministers to the parliamentary committees in October 2003. ROI obtained letters of support for the proposed legislation from both the U.S. Embassy and the EU delegation. The proposal encountered opposition in the form of a competing draft law, submitted by the Ministry of Justice, making the IPRS subordinate to the Ministry of Justice. The legislation has not moved through the parliament. The most important reason was the need for the parliament to act first on the highly controversial law “On Restitution and Compensation of Property to Former Owners.” The votes on this law took place only in late summer 2004.

In the absence of action on the draft amendments to the law “On Immovable Property Registration,” piecemeal improvements to the organization of the IPRS would be ineffective. ROI assisted with some training of IPRS managers and staff, including a USAID-funded study tour (in conjunction with World Learning) for the IPRS managers with the Registries of Scotland. ROI also helped with training related to the methods of handling the digital data being gener-

ated by systematic First Registration. This activity was in preparation for a project of the World Bank to undertake a comprehensive computerization of IPRS operations.

ROI's relationship with the IPRS central office, and the chief registrar in particular, was handicapped in a number of ways. First, the chief registrar himself was changed at least three times during the two-year period of the project, and commitments made by one were not understood or supported by subsequent chief registrars. Second, the role of the PMU, as an agency managing donor funds to conduct First Registration activities, competed with the role of the IPRS, who holds ultimate responsibility for land registration. ROI negotiated a workable service contract with the PMU for conducting systematic First Registration in rural zones, and the then chief registrar expected to receive a similar "service contract" to compensate his agency for the extra work required to support systematic First Registration in urban zones. Third, the PMU, with donor funds, had been providing significant services to the IPRS in the form of "sporadic First Registration" in urban areas, which led to significant revenues for the IPRS. Without donor funds to support this ongoing PMU activity in IPRS's district offices, the IPRS lost the use of these free services—and the significant fees they generated—and was under pressure to compensate for that loss through a service contract with ROI. ROI negotiated a workable service contract with the then chief registrar that allowed activities to proceed. However, he was subsequently replaced and the new chief register did not feel obligated to honor the terms of the contract, delaying seriously urban registration activities. While no other course was practical or available to ROI, in the end the service contract seemed to compromise the working relationship with the IPRS central office in a number of ways:

- The chief registrar considered ROI to be a vendor and purchaser of services, with no advisory role in helping form registry and immovable property policies.
- Staff of the IPRS did not consider the First Registration tasks to be a part of their assigned governmental jobs, and they failed to incorporate them into their routine. They often neglected these tasks and expressed resentment that they received no extra pay to do them.
- The chief registrar considered the per-property unit fee in the service contract with ROI as an obligation, due and owing to the IPRS (even though it had no authority under the domestic law to collect this fee). When this compensation was recast as an in-kind contribution, he assumed that his requests for equipment or materials would not be subject to the limitations imposed by USAID regulations.

The IPRS central office generally was not an enthusiastic counterpart in the work of First Registration, in contrast to the cooperation and support from its district offices. During the period of months, when public displays were underway in 74 zones, only the deputy chief registrar made an effort to visit a public display. The displays incorporated the new standards set in the IPRS instructions and the innovations of monitoring and outreach work by the AFCR. They were the heart of the interface of the new system with citizens. The district registrars and local staff exercised oversight, but the chief registrar and other senior staff of the central office of the IPRS showed no particular interest, nor provided any significant support.

3.5 THE PROJECT MANAGEMENT UNIT

While ROI achieved significant success using the global performance-based contract with private firms, it experienced far more limited success with the PMU. Despite the creation of a new contractual arrangement and efforts to strengthen its management and technical capacities, the PMU remained flawed in its fundamental structure. Indeed, ROI's only motivation for using the PMU at all was in recognition of its past history with First Registration, and its political mandate to guide those activities, especially in rural areas. The PMU retained its form and status as a monopoly "state enterprise," linked to the Ministry of Agriculture and Food and subordinate to its main concerns with farm organization and production. PMU management was not guided by the concept of modern business practice: that the quality of its performance would affect its ability to gain customers and revenue. Instead, the PMU assumed that it was guaranteed the role of pass-through of all international assistance funds and as the overseer of all First Registration, in spite of the strict terms of its performance-based contract with ARD under ROI. The service contract with the PMU defined numerous tasks, which were technically of a governmental nature and could not be performed by any other entity. For example, the PMU was to be paid for the following services:

- Assembling the documents on land and property rights, which were held in state archives and could not be accessed directly by the First Registration subcontractors.
- Providing the computer software, held under proprietary rights of the Government of Albania, essential for arranging the data in the proper format for entry into the overall IPRS.
- Ensuring that the substance of the work—maps and kartelas—conformed to the standards set by law and technical regulations.

The PMU had the ability to prevent the work from starting in any zone by choosing to withhold or failing to obtain the necessary documents. Further, it could block completion of stages of the work by refusing to sign off on the compliance with technical standards. Contrary to modern concepts of governmental administration, which view the acts of supplying information regarding citizen rights as a public service, the PMU regarded the governmental database and system tools as commodities for sale. The PMU felt it was a monopoly "middle man," and not obligated to meet its performance-based commitments under its contract with ARD.

The terms of the contract between USAID and ARD for ROI specifically required ARD to assess PMU staff capabilities. If the PMU did not have the capacity to continue first registration, ARD was to develop a work plan and budget to directly undertake first registration activities. Institutional capacity building of the PMU was specifically excluded from ARD's scope of work for ROI. The one-year service contract gave the PMU generous opportunity to demonstrate competence to continue first registration activities. However, by the conclusion of the contract year 2003, it was clear the PMU did not have this capability, and ROI proceeded without further PMU involvement.

3.6 PRIVATE SECTOR DEVELOPMENT

ROI strengthened private sector professionals by offering the subcontracts for substantial work to 17 private firms, plus the technical monitoring firm, Geo-Consulting. This allowed these private

companies to upgrade their technical capacities, equipment, and management skills. In particular, the unification of the geographic tasks and the legal tasks required the survey and legal professionals to work closely together, broadening their respective perspectives accordingly.

A few of the firms have now become sufficiently established to compete for customers among the landowners, investors, builders, and financial institutions. These customers are all users of the registry system. Given these firms' familiarity with the IPRS and its procedures, as well as their experience working with integrated professional staffs, they should be able to offer cost-effective and quality service. Smaller firms and those that are based outside the main cities will require continued donor-funded systematic First Registration activities to sustain their businesses.

Only two or three of these private organizations had been "firms" with permanent employees prior to ROI. Most of the firms were made up of individuals or partners, who assembled the required specialists as needed to accomplish the contracted tasks specifically for ROI. Often their "employees" were also on the staff of the district registry and cadastre offices. It was often difficult to separate "public service" and "private sector" responsibilities and activities.

Beyond the legal, data processing, and survey professions directly involved in systematic First Registration activities, ROI has had more limited impact on the private sector. It is the institutional "users" of the registry—major property owners, builders and developers, financial institutions, real estate agents, and lawyers—who have primary business interests in its success. These users support the legislation and other policy decisions necessary to improve the registry and gain the resources it needs. In Albania, professional organizations remain weakly developed. Those who are potential beneficiaries of a strong registry have not yet fully appreciated their interests in it.

3.7 PUBLIC OUTREACH AND MEDIATION

ROI introduced strong components of public outreach and mediation of conflicts as integral parts of systematic First Registration. The AFCR is a non-governmental organization that had previous specialization in the mediation of inter-family and inter-clan conflicts in rural Albania. ROI contracted for services from this group anticipating substantial numbers of serious conflicts, especially in the peri-urban and central city areas, which developed chaotically in the past 12 years.

The AFCR provided three specific outreach services under its subcontract. First, in the urban zones, teams of AFCR specialists went out as an "advance guard" to inform the citizens that systematic First Registration was to take place. They visited the homes of citizens and local businesses, handed out the explanatory brochures, and encouraged the citizens to prepare their documents for submission to clarify their property rights. In rural zones, where problems of conflicting citizen interests arose, the AFCR also intervened. Second, the AFCR was the monitoring unit for the process of public display. AFCR specialists visited each zone several times to ensure that the displays were set up properly, meeting the regulations and giving effective notice to citizens. They monitored the "log books," ensuring that subcontractors addressed citizen questions and problems. In serious cases, they offered to mediate disputes, often between

neighbors or family members with conflicting claims. Third, after the process of public display, the AFCR undertook citizen surveys to determine whether people had information about the First Registration, had participated, and were satisfied with the service and the outcome.

As a result of the AFCR outreach, in many of the zones there was lively participation in the public displays, and people reported a high level of satisfaction with the First Registration process. This, of course, was not uniform in all the zones. The post-process surveying revealed some of the difficulties. In the zones of the largest cities, outreach was the most difficult. In villages, the local elders and informal word of mouth were effective means of communication. In smaller cities, the dominant local radio or television station was a good outlet for information. Small city mayors and other officers were able to reach their constituents directly. In some of the large city zones, the AFCR and subcontractors solicited public participation through extra efforts at door-to-door and direct delivery of notices to citizens.



registries, and demonstrated unreserved satisfaction at having their own. The signs contributed to a sense of professionalism, transparency, and public service.

One component of ROI outreach activity was the formalization of the IPRS schedule of services and fees. IPRS district offices generally did not have any sign of what services they provided and what their fees were. This contributed to an atmosphere of uncertainty and suspicion of corruption. ROI designed, produced, and installed large, framed, professionally printed signs in all IPRS district offices.

Initially, district registers resisted the signs, and even argued that the fees were incorrect (although they are set by law and approved by the chief registrar). However, by the time the last and most remote district registries received their signs, their district registrars commented that they had felt left out when they noticed such signs in other district



PART 4. IMPACT

4.1 CIVIL LAW AND THE PROPERTY MARKET

Ultimately, the success or failure of systematic First Registration and the activities to improve the IPRS must be measured against their original purpose: to support civil law protection of property rights and corresponding markets. It is clear that ROI has put more properties into the system and has made improvements in the system that should lower costs, decrease delays, and minimize corrupt practices. To determine whether these accomplishments will strengthen civil law practice and real property markets, three additional questions should be considered:

- To what extent has public confidence, understanding, and use of the registry system increased?
- Are compatible and complementary changes taking place in the parallel institutions that protect property rights and carry out property transactions—the courts, notaries, real property business, and legal services?
- Is there a positive evolution in the principles and forms of civil law that define property rights?

The answers to these questions likely will not be seen clearly in the short term. The impacts of systematic First Registration will not be direct, since there are numerous other factors—economic, social, legal, and political—which affect the volume and character of property decisions and transactions. Progress may be evident over the long term in an increasing volume of judicial and administrative decisions, which rely exclusively on the registry. Property-related transactions registered in the IPRS should continue to increase, while informal transactions that are not registered should continue to decrease. Because of their traditions and recent history, Albanians will continue to rely on informal property relationships to a greater extent than other Europeans. However, as industry, agriculture, trade, and urbanization evolve, the use of civil law forms and procedures will increase, as will the corresponding use of the registry. Such trends would prove the effectiveness of systematic First Registration and ROI.

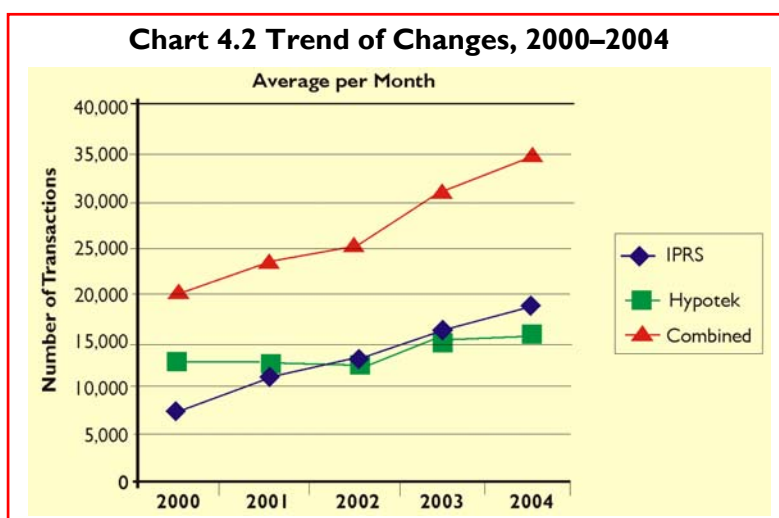
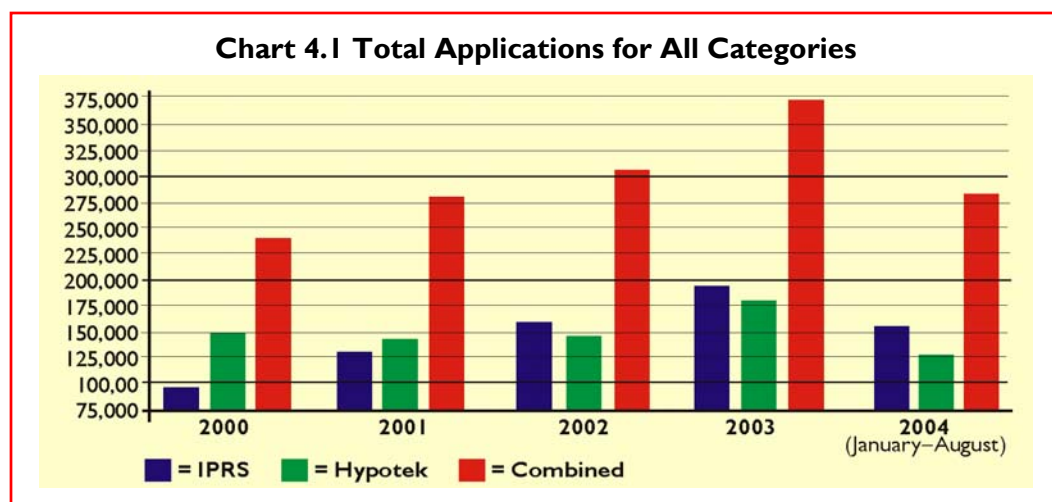
The IPRS must still confront a number of problems. ROI has undertaken three analytical studies to help provide a foundation by which to resolve the problems. One focuses on the citizens' use of the registry system. A second focuses on the relationship of the IPRS to other land- and property-related institutions. A third focuses on public perception of the property rights and their security.

4.2 CITIZENS' USE OF THE REGISTRY SYSTEM

The IPRS keeps statistics on the volume of applications for services made each year in the district registry offices for various categories of transactions. These figures show the numbers of property owners (including citizens, representatives of juridical persons, and state agencies) who record new property-related transactions, acquire certificates of ownership, and request copies of the archive documents. A strong positive trend in these numbers would indicate that public confidence and understanding of the registry are becoming widespread and that institu-

tions (such as the courts or notaries) are requiring proofs from the registry. ROI has analyzed the IPRS data, as described in the following paragraphs.

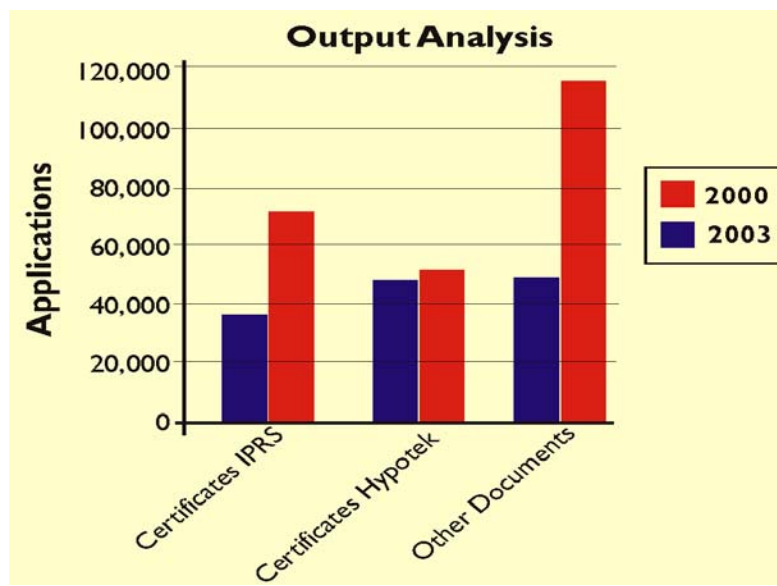
The IPRS statistics show 23 separate types of services, which can be grouped into two categories. First, some provide the “output” documents of the registry: certificates of ownership, copies of map extracts and other documents in the archives, and verifications of ownership. Second, others accept “input” regarding new transactions and legal or administrative actions, changing ownership, changing the boundaries or characteristics of an object, or imposing new rights or restrictions. The IPRS section of the district office handles all transactions involving registered properties. The *hypotek* section of the office handles transactions for all unregistered properties. The total number of applications for services, received by the district offices during the past five years, is shown in the Chart 4.1.



The trend of change illustrated in Charts 4.1 and 4.2 shows gradual growth in applications of all types as well as change in the balance between the two registries—use of the IPRS has been growing more strongly as more properties have entered the registry. The numbers also show a significant difference in the levels of use of the IPRS and the hypotek. IPRS applications are fewer than 10% of the total

2.3 million (primarily rural) properties in the registry. Applications to the hypotek reach almost 20% of its 900,000 urban property units. This difference probably reflects the higher level of economic activity and real property transactions in the cities, the higher value of urban land, and the larger scale of urban development projects.

Chart 4.3 Output Analysis of Certificates of Ownership



To clarify the significance of the user data, the ROI undertook both a categorical analysis and an international comparative analysis. The categorical study looked at the largest groups of applications for *output* and *input* services. On the *output* side (see Chart 4.3), applications for certificates of ownership from the IPRS were 35,563 in 2000 and rose to 70,688 in 2003. Similar applications from the hypotek were 47,592 in 2000 and 53,427 in 2003. The number of applications

for copies of documents and maps from both registries rose from 49,900 in 2000 to 117,800 in 2003. The trend in growth of these numbers is a positive sign. It shows that citizens have a growing understanding of the value of the certificates as proof of their rights and that judges, notaries, lawyers, or real property brokers were requiring the citizens to present proof, drawn from the registries, in court proceedings and transactions.

On the *input* side, the number of persons coming to the registry offices to register new transactions and changes was much smaller than those requesting *output* proofs. The registration of subsequent sales and leases of properties in the IPRS rose from 9,629 in 2000 to 17,081 in 2003. While this was a substantial percentage growth, the actual numbers were very small in relation to the total database of over 2 million properties. The number of citizens registering changes based on inheritance documents was 1,100 in 2000 and 5,100 in 2003. The number of persons registering servitudes was 10 in 2000 and 26 in 2003. These figures (and similar tiny figures in other categories) suggest that most people were not coming forward to update the status of their rights as changes occurred.

The comparative analysis shows that in the countries of Western Europe, far greater use of the registry occurs both on the *input* and the *output* side. Registries receive tens of thousands of inquiries and “searches” for data each month; in many countries, free access is given through the Internet. The modern registries also show much higher turnover of subsequent transactions and changes. For example, about 1.5% of housing units transfer each year by inheritance (related to the natural death rate) and, in normal economic times, another 2–2.5% of all properties change owners in sales between citizens and transactions involving juridical persons (sales, transfers of property in reorganization of enterprises, etc.). In other former Communist states, numbers of transactions in recent years have been higher (5–7%), reflecting the release of “pent-up” demand. By comparison, the very low numbers in Albania indicate that most transactions are taking place outside the registry. This is a critical problem, because the guaranteed proof of

ownership and other rights, offered by the registry for each property, rests on the unbroken chain of transfers from their original holder to the next and the next. Failure to register new transactions and changes breaks the chain. In theory under the law, it means that the person noted in the registry remains the “true” right holder and that the subsequent, unregistered rights are invalid. In reality, it means that people are ignoring the registry and finding alternative methods of securing and transferring their rights.⁶

ROI illustrated the problem, quantified by the statistics, in two other ways. First, in several of the urban zones, the subcontractors reviewed the status of the apartment units, which had been subject to PMU’s systematic First Registration four or five years ago. The data related to hundreds of these units in each zone were found to be inaccurate because no one had registered changes in the intervening years.⁷ ROI corrected and updated these inaccurate kartelas, but their accuracy will deteriorate over time unless owners register subsequent transactions. Second, one urban cadastre zone in the city of Shkoder had been expanded in size to encompass territory that was previously subject to PMU’s systematic First Registration as rural territory. Here, similarly, ROI found that the registry data were wrong for virtually every property. Subdivisions had taken place; ownership had changed; buildings were constructed, with no one registering the changes.

There are many reasons for the low use of the registry by citizens, and the nonexistent use of it by juridical persons (see sidebar).

4.3. RELATIONSHIP OF THE IPRS WITH RELATED INSTITUTIONS

One of the major obstacles to the effective functioning of the IPRS has been its lack of coordination with the parallel institutions, in which property rights are protected and transactions accomplished. There appear to be four problems. First, the Government of Albania has not resolved the issue of departmental subordination of the registry; conflicting definitions of the authority to create and maintain property records remain in the various laws.⁸ Second, the Government of Albania has not satisfactorily defined the role

Reasons Behind Resistance to the Registry

- They involve the inefficiency of IPRS’s operations and the high costs of carrying out transactions.
- They lie in the culture and traditions of Albania, where business deals and property arrangements are based on family, clan, and friendship relations without civil law agreements.
- They are the result of the design of the IPRS, based on foreign models with inadequate adjustment for Albanian traditions and contemporary practice.
- They are aggravated by the management approach of the IPRS, which tends to view the registry as an instrument of state control rather than an instrument to support the self-initiated property actions of citizens and juridical persons.
- They are the result of the lack of consensus among citizens, many of whom disagree with the outcomes of privatization and the resulting distribution of property rights and, therefore, believe that the fundamental questions of ownership and rights remain undecided.

⁶ See annual reviews of the Baltic States Real Estate Market available at the Lithuanian Registry and Cadastre Website www.kada.lt

⁷ In the City of Vlora, for example, the apartment updating involved 1,959 transactions in Cadastre Zone 8604; 880 transactions in Zone 8605, 1,590 transactions in Zone 8603, and 827 transactions in Zone 8602.

⁸ Law no. 7843 “On Immovable Property Registration” subordinates the IPRS to the Council of Ministers (which is the case, factually). However, the civil code continues to describe the registry as a unit subordinate to the Ministry of Justice.

of the notaries in relation to the registry, in legislation or in practice. Third, the interaction of the registry with the rural cadastre remains unclear, and these institutions remain technically and functionally separate. Fourth, the courts or legal practice have not clarified and confirmed the status of registry documentation as conclusive or *prima facie* evidence in resolving property disputes.

As is often the case in post-Communist countries and elsewhere, the departmental subordination of the registry has been difficult to resolve. On the basis of world experience, there is no “right answer.” Some civil law countries place the registry under the Ministry of Justice, thereby emphasizing its legal evidentiary role. Other countries make the registry quasi-independent, emphasizing it as a support service to the real property industry. Still other countries link the registry to a cadastre or geographic information system (GIS) organization, emphasizing its survey/mapping components. In helping to draft the revised law no. 7843, which seeks an independent IPRS, ROI emphasized its management and self-financing independence. This is a somewhat different idea than the designers of the IPRS had in mind in 1993, when they described an IPRS as part of a broad GIS or cadastre system.

Civil law practice throughout the world, as well as in Albania, defines a central role for notaries in the legal system, including the handling of property transactions. The IPRS is, however, modeled on the registries of common law countries (Scotland, in particular), where notaries are not a central part of the legal system. Indeed, the explanatory documents of the international consultants from the early 1990s expressed the idea that citizens could, with the IPRS, engage in transactions and use the registry without the need for notaries. This is inconsistent with civil law practice throughout the world as well as with Albanian law. The notaries have solidified their jurisdiction through legislative changes in recent years and have raised their transaction fees to quite substantial levels. This discourages people from using the proper procedures of civil law transactions and registration. So far, the government and parliament have not had the inclination, coordinating skill, or sufficient power over the bureaucratic units to address the problem. Even the proposed amended version of law no. 7843 “On the Immovable Property Registry,” does not seek a comprehensive approach.

With respect to the rural cadastre, the original law no. 7843 and law no. 8752 “On Structures for Land Administration and Protection” envisioned a system in which the cadastres would evolve into a GIS database concerned with problems of land quality, valuation, taxation, and other considerations of land use; separately from ownership and property rights. In reality, however, there is considerable overlap. The rural cadastre offices continue to hold the archives of ownership source data (the *tapis* and other “privatization” documents). The IPRS, under government order, assumed possession of the hypotek archives. However, only the PMU’s systematic First Registration of rural properties (a process that donors funded) transferred the cadastre office records to the IPRS. In this way, the process has taken the form of a commodity sale to the donor-sponsored project, rather than an agency-to-agency transfer of governmental data. The relations of the cadastre and the IPRS have continued in the same way: as “services” and “sales” rather than cooperative inter-agency activity.

4.4 PUBLIC PERCEPTION OF PROPERTY RIGHTS AND SECURITY

To gauge the impact of systematic First Registration on the public understanding of property rights, ROI commissioned the AFCR to survey the impressions of citizens and their local leaders in several zones in which the process was successfully completed.⁹ The survey sought to determine whether people now had a more secure sense of ownership and greater optimism about their ability to engage in future transactions. The AFCR solicited subjective responses by posing a series of questions, including the following:

- Had the citizen applied to the Registry office for the certificate of ownership?
- During First Registration, had the citizen brought a problem to the attention of the subcontractor or registry office? Had the problem been solved?
- Was the citizen planning in the near future to engage in a transaction with the property or a new investment/construction on it?

In general, in the zones that had successfully completed First Registration, large majorities of people confirmed their understanding that they could now obtain a certificate of ownership, which would provide the basis for protection of their rights and transactions. Substantial numbers of people had already made application for these certificates and obtained them; others were planning to do so. Many people also intended to engage in transactions—in particular, to seek loans based on the property value and to invest in tourist facilities, improved housing, or improved agriculture-related structures on the land.

The interviews revealed, however, that there were substantial minorities in these zones who did not believe that First Registration had a satisfactory outcome. These people fell into two groups. First, some people who had unsatisfied restitution claims continued to argue the illegitimacy of law no. 7501, and they indicated that they would deliberately not seek certificates of ownership for the properties they did receive. They believed that the question of ownership was still open and that the certificates issued to people, based on law no. 7501, should not be regarded as the final definition of the rights. Second, in some of the urban zones citizens who had acquired possession of land in informal transactions since 1991 were dissatisfied because the process of First Registration did not fully legitimize their rights, leaving them to face new judicial and administrative procedures.

These two groups were substantial minorities in the zones in which the study was conducted and were the majorities in the seacoast zones that had to be dropped from the ROI project. They could be seen to pose a significant problem for the future of the IPRS because they appeared to be developing as active nonparticipants and opponents to the registry. As discussed above in relation to the categories of passive nonusers of the registry (people who do not record inheritance or subsequent transactions), these additional groups of nonparticipants could undermine the registry by causing it to lack current information on property rights and by relegating more transactions into the competing, “informal” systems of transactions.

⁹ Report of the Albanian Foundation for Conflict Resolution of November 2004, “Evaluation of the Impact of the Project First Registration of Immovable Property, Post-Project Phase.”

These potential problems could be solved by the speedy and efficient implementation of two new laws. One is the revised law “On the Restitution and Compensation of Former Property Owners,” adopted in September 2004. The other is the new law “On the Legalization and Regularization of Informal Zones,” adopted in October 2004. If implementation of these laws succeed in providing satisfactory settlement of former owner claims and allow the persons holding “illegal” land and building rights to bring their properties into civil law status, the informal systems, operating outside the IPRS, should diminish.¹⁰

ROI was not in a position of authority or responsibility to provide a speedy and inexpensive method for resolving disputed property rights or illegalities. AFRCR mediation during the period of public display had successful outcomes only in cases where a civil law agreement between private parties was all that was needed. Mediation could not cure illegalities arising from non-compliance with planning or urbanization regulations, or from the informal occupation of state land. The IPRS was appropriately strict in refusing, on its own authority, to correct errors in legal documentation. This reflected a healthy caution to ensure that abuses would not occur. As a result, however, many owners have been required to enter court proceedings or seek administrative actions to resolve problems that were brought to light during systematic First Registration. These include cases of small errors such as misspelled names.

¹⁰ Unfortunately, this does not appear likely. See the proposed law “On the Legalization and Regularization of Informal Settlements,” introduced into the parliament in May 2004. Also see the draft law “On Legalization of Supplemental Floors of Buildings.” Both laws take a punitive approach, imposing high fees, penalties, and costs on citizens and juridical persons, rather than encouraging speedy and efficient legalization and regularization of properties and informal areas.

PART 5. STATUS OF PROPERTY RIGHTS IN ALBANIA

5.1. OVERVIEW OF CIVIL LAW AND PROPERTY RIGHTS

ROI analyzed the content and status of civil law rights in Albania to determine to what extent citizens, juridical persons, and state agencies are functioning effectively as owners and holders of rights in immovable property. The findings go beyond the simple matter of owners buying and selling properties. The research reveals complex patterns in which non-state owners hold a mixture of limited civil law rights, administrative grants, and restrictions. They exercise rights based often on illegal and incompletely defined relationships with neighbors or other holders of subordinate rights.

International and local specialists, who created the IPRS, expressed a vision that is important to recall and compare with current realities. In the “Land Use Survey of Tirana,” based on a 1996 survey of households and businesses, the PMU and the University of Wisconsin reported that:

- 87% percent of all properties were privately owned, and the remaining 13% of state-owned properties were primarily institutions, roadways, and public assets. The state appeared to have minimal holdings of residential and commercial properties in Tirana.
- The residential rental market encompassed 9.6% of residents, and the rental market for commercial properties represented 32% of the total.
- 72% of property holders who had documentation of ownership had gained their documents during the relatively recent period of transition.

ROI’s analysis reveals a very different pattern of ownership and subordinate rights in the cadastre zones of Tirana and other cities where it completed systematic First Registration. Individuals own almost all apartments and some business premises, but many buildings fall into categories of undefined or restricted ownership and illegality. The state owns most of the land, not only in streets and public spaces but also a large portion of the land classified as building sites (*truall*). Almost no juridical persons (such as corporations and institutions) own immovable property, except for developer enterprises in the course of selling off apartments. Almost no leases have been registered for any type of property. In the hundreds of cases in which a building or its apartments and premises are defined as separate objects, the registry contains no reference to legal documents linking the land with the building. In many cases, buildings straddle two or more land parcels for which there are no documents showing consolidation of that parcel.

A legal perspective helps illustrate this situation using a simple and common classification of mechanisms of property relations:

- Unilateral administrative grants and orders (rights, obligations, and restrictions are defined solely by a state agency).
- Two-party contracts (rights, obligations, and restrictions are defined by mutual agreement of the parties and enforced by the courts only against either party).
- Civil law property rights, which originate as unilateral or two-party instruments but, following registration, become binding against all third parties, including the state.

Albania, in theory, made a commitment to transform immovable property relations out of the category of unilateral administrative grants and orders into the categories of bilateral contracts and property rights. However, what the registry data reveal today is that most immovable property relations remain in the first and second categories, with only weak development of civil law property rights. Reasons for this limited progress include:

- A narrow and categorical definition of “ownership” rights in the fundamental laws on land and property of Albania.
- The reemergence of traditional customs and a lack of experience in creating modern business relationships.
- Taxes and administrative fees that discourage citizens from using the civil law mechanisms and the registry for their transactions.
- Use of the registry as a mechanism for imposing and enforcing administrative law requirements.
- Technical rules of registration, which default ownership to the state whenever there are defects in the documentation of private rights.

Taken together, these aspects of the system show a bias against private ownership and individual initiative in forming immovable property relations. This bias continues to appear in new legislation, regulatory policy, state and municipal administrative practice, business practice, and family relations. This bias has affected the registry. Changes are necessary in order to strengthen civil law. This analysis considers four problems of law and practice in the sections that follow:

- The categorical concept of ownership
- The fragmentation of property rights
- Customary and informal business practices
- Disincentives to using the IPRS.

5.2. THE CATEGORICAL CONCEPT OF OWNERSHIP

At the most fundamental level, the limitations and bias of the immovable property system arise out of the definition of *ownership*, which preserves in the Albanian law a categorical definition of land and immovable property. This definition is inconsistent with the Western civil law concepts that are the basis of the IPRS.

The definition of property ownership (*pronave*) appears in the Albanian civil code.¹¹ Unlike traditional European civil law, it does not imply a broad and uniform set of elements, composing the right of ownership and arising out of a concept of property as one of the inherent human rights.¹² Instead, like other post-Communist nations, the Albanian definition provides that citi-

¹¹ The IPRS was designed by common-law trained lawyers and was modeled after the registries in smaller Western European nations, particularly the Registry of Scotland.

¹² See, for example, Article 252 of the French civil code, which defines ownership (*propriete*) as the right of the owner to possess, use, and dispose of the property “in the most absolute manner...”

zens and juridical persons may possess in ownership whatever elements of rights the law allows—that is, whatever the state has chosen to grant.¹³ In this framework, there is no single or unified definition of property ownership. Instead, there are variable elements of ownership applicable to different categories of land and immovable objects. These elements—related to acquisition, possession, use, and disposition—change from category to category and from one person to another. Only certain persons can acquire land of a particular type. Only certain forms of transaction may be used. The methods and procedures by which owners may decide to develop or improve their property objects are found in different planning or regulatory laws and under different administrative jurisdictions. The methods for disposing of rights to other persons also vary. Property ownership comprises a “mix and match” of the following elements:

- The status of the person acquiring the property (labor, residence, family, category of juridical person, etc.).
- The categorical classification of the property unit (agricultural land, *truall*, industrial premise, urban housing unit, etc.).
- Other specific classifications, uses authorized by permit, restrictions or limitations imposed at the discretion of an administrative agency with control over the property object.

This difference in the concepts of ownership—uniformly defined in traditional European civil law but categorically defined in Albanian law—has a profound impact on the structure and functioning of the IPRS. In a Western European country, a typical transaction (such as a sale of ownership) is relatively easy and quick. The parties prepare, sign, and notarize a purchase/sale agreement and present it for registration. Because any individual or juridical person is free to acquire and dispose of any type of land, building, or premises, there is no need to verify the status of the parties and match it with the classification of the object in order to determine that the transaction is legal. The registry clerk simply receives the purchase/sale document, ensures that it is in a proper format, and checks to verify that the person named as the seller is the same as the person who was previously registered as the owner. The clerk then crosses out the old owner and inserts the name of the new owner on the correct registry page (*kartela*). The clerk accomplishes this task in a matter of minutes and no superior officer needs to intervene.

In Albania, under the categorical system, a transaction is not valid until someone has verified the identity of each party and determined their capacities to dispose of and acquire the particular type of property under the form of transaction set forth. The basic laws are confused about who has this authority—the notary, the registrar or registry clerk, other administrative agencies, others—and in practice the process is duplicative. At the registry office, the clerk must receive and review not only the transaction document but also other documents, which verify the identity and status of the parties and classify the object.¹⁴ The clerk must understand the system of matching the proper transaction forms to the different types of objects and parties.

¹³ Compare the language of Article 149 of the Albanian Civil Code, which states that “Ownership is the right to enjoy and dispose of objects freely, within the provisions of the law.”

¹⁴ The level of complexity is evident in the Regulation on the Work of the IPRS of 1999, which describes the documents, necessary for defining the rights of ownership in immovable properties of various types. It lists 23 categories, with numerous subcategories, and each with several verifying documents.

The clerk must look for any restrictions or limitations that have been imposed on the property object by administrative orders or past transactions. Therefore, the review of an application takes time, and each must be transferred to one or several superior officers for their approval. The registry of Albania will never be as efficient or accurate as the registries in Western European countries, because the process is more complicated and requires more judgments to be made.

Albania's fundamental laws differ from other Eastern or Central European states. They may have similar categorical systems of land and property, but they also have a land code as the basic framework law. Ukraine and Russia, for example, have systematically arranged classifications of land in the land code, alongside the pertinent civil law and administrative law mechanisms for their acquisition, disposition, and use. With this consolidated structure, the land code reveals overlaps and gaps among the categories, anticipates most conflicts, and supplies rules of priority and procedures for their resolution. In Albania, such a framework and coordinating rules are missing. The fundamental laws are contradictory in many aspects, leaving gaps and overlaps that create conflicts among citizens, administrative units, and private and public interests. No procedures or rules of priority are available; no one has authority to resolve the conflicts.¹⁵ This forces the registry office to stand in the middle in many land and property disputes because it is the last agency in the series of actions necessary to complete transactions. Without guidance in the law, it is not surprising that routine registry applications take months and properties with problems enter a state of paralysis that can continue for years. The confusion also contributes to a perception, if not a reality, of corruption and influence peddling.

These problems go beyond administrative difficulties. They are more than simply symptoms of inadequate technical equipment, insufficient management training, corruption, or political interference. In reality, they are the result of the mismatch between the registry and the fundamental law. The solution requires two complementary strategies: (1) a further evolution of all the laws on land and immovable property and (2) a redefinition of the registry's role and authority that recognizes its functional limitations.

5.3. FRAGMENTATION OF PROPERTY RIGHTS

Another major problem of immovable property rights in Albania, highlighted by ROI's support to systematic First Registration, is the fragmentation of land and the separation of building rights from land rights. The confused processes of property distribution, privatization, and restitution in both rural and urban areas contributed to this problem.

Fragmentation of farmland has been a strong concern of the Ministry of Agriculture and Food and the international organizations because it hinders agricultural productivity.¹⁶ Frag-

¹⁵ The dispute over the tourism development area in Kakome has been the most controversial case illustrating this problem. In the absence of decisive proof that any of the interested private or state agency parties had perfected a right of ownership in the disputed land, the national Commission on Territorial Adjustment took it on itself to resolve the question of ownership. It created a procedure, defined nowhere in the law, allowing the applicant for construction permits to assemble the data on potential ownership rights from various state archives.

¹⁶ See Ministry of Agriculture and Food of Albania, Annual Report 2002; World Bank, Albania Poverty Assessment Report, November 2003; UN Food and Agriculture Organization.

mentation came about when the collective farms were chopped into tiny parcels in an attempt to ensure that each family would get a relatively equal share, calculated by the Communist-era system of agronomic measurement. Each family got some cropland, some olive trees, and some vineyards in parcels scattered over areas of higher and lower fertility. Each family also appears to possess common rights to graze livestock and make other use of state-owned pasture and forest lands, but these common rights are of unilateral administrative origin and are not registered in the IPRS.

The fragmentation of urban land and the separation of land and building rights are a hindrance and add risks and costs to urban development. Urban fragmentation has several causes. In restitution cases, the multiple heirs of a former owner often take land in individual fragments, rather than as a consolidated family holding. In the privatization of small houses, the Communist-era standards of parcel size give each family only 200 square meters of the land. If the actual yard of the house is larger, the state retains ownership of the excess, with the house owner entitled to a right of use.¹⁷ In most cases, however, no documentation of the use right is registered. In privatizing apartments, the state granted units to citizens but only undefined common rights to the building and surrounding land. The land underneath the apartment building is a separate parcel, encompassing one meter beyond its outer walls. The state remains owner of the surrounding space, without regard to its character or use—children’s play area, garden, parking, or right of way.

Urban property fragmentation has been aggravated in a number of ways. Municipal governments or state agencies are unable to define and enforce reasonable urban planning and construction standards. The regulations do not require the consolidation of a building site, by civil law agreements, prior to construction; nor do they require the clarification of rights and obligations with neighboring properties. Instead, they treat all such problems as aspects of administrative law and assume that the urban studies, project approvals, and construction permits will fix the necessary arrangements. The practical result is the somewhat chaotic urban development in Albania today.

The IPRS has not been able to define a proper role for itself in addressing the problems of property fragmentation. It assumes that the accurate data on the size, character, boundaries, and ownership of property units, assembled in systematic First Registration, will lead to the rationalization, consolidation, and legalization of illegal conditions. No one has yet defined the methodology by which this will happen. The process, of course, will not be a simple matter of applying methodologies of analysis and technical standards. Changes in law are needed to remove the bias against civil law and allow citizens to address the problems through mutual agreements and property instruments (leases, servitudes, mortgage instruments, and transfers of ownership). Unfortunately, the drafts of the laws On Legalization and Rationalization of Informal Zones and proposed amendments of the laws on Urban Planning and On Construction all favor unilateral administrative mechanisms and state intervention.

¹⁷ The Regulations of the IPRS, Chapter IV Sec. 13, state that village house plots are registered based on the Nomination List of Owners of Sites and Houses, provided in Council of Ministers Decree no. 432 of 14 August 1995.

There is pressure on the IPRS to add more administrative data and more elaborate mechanisms of restricted property rights. This is part of a trend to create more administrative law mechanisms. In particular, there has been unproductive and heated debate among the IPRS specialists about the need to place on the Registry Index Maps information about “illegal” structures. Proposals include specifying, with a system of symbols, the categories of their illegalities. Developments along these lines seem counterproductive. The IPRS is the repository of civil law rights and obligations. Other agencies hold the responsibilities to define and enforce administrative requirements. Including illegal objects on registry index maps puts the IPRS in a position of continually updating their maps with illegal objects as they appear, disappear, or are converted to legal objects. The IPRS would become a party to the process of enforcing laws and regulations for which they are not responsible.

5.4. CUSTOMARY AND INFORMAL BUSINESS PRACTICES

The reemergence of traditional family property relations and informal business practices poses additional problems for the IPRS. People appear to be comfortable defining their immovable property rights and obligations as family or clan relations, as business arrangements, or in other informal ways. Custom, tradition, and contemporary business practice can provide legitimate and effective bases for a property system, as in the “common law” of the United States and Britain. Indeed, several studies that have looked at traditional family relations in Albania have found many positive effects. However, this works only if the institutions and mechanisms for protection of rights are structured to match the customary activities. This is not the case in Albania, which has made a commitment to develop civil law (not common law). Indeed, the civil code contains provisions that specifically reject the use of common law type mechanisms—such as the *vertetit ii faktit*—as the basis for defining immovable property rights.

Business dealings involve two-party contracts rather than property transactions. Building developers create partnership agreements with the owners of land rather than leases or sale of the land. They sell unbuilt apartments with pre-payment contracts. Both of these instruments — partnerships and pre-payment contracts—are weak substitutes for the property-based financing mechanisms. In family affairs, people avoid formal procedures of inheritance and they do not clarify in written documents the consolidation or division of property in marriage, divorce, or sibling relations.

As discussed above, the widespread use of weak bilateral agreements and informal arrangements creates a major dilemma for the future of the Immovable Property Registry. It leads to the breakdown of the chain of transaction data that is essential for the registry to maintain legal proof of ownership and subordinate rights.

5.5. DISINCENTIVES

Several aspects of the IPRS process, which are related to other administrative laws and practice, tend to discourage and push away potential applicants.

First, although the fees for registration are at relatively low levels, most actions require legal documentation, surveys, or plans. These are only available at significant cost. In particular, notary fees are unusually high for all types of transactions. Second, the registry offices collect the real property transaction tax, which is a percentage of property value and can be quite substantial. Many people avoid the registry because of this tax. Third, the law (no. 7843) takes a punitive approach in mandating that transactions must be registered during a period of 30 days following a transaction. If they are not, penalty payments must be made. This discourages use of the registry, especially if parties miss the deadline.

Perhaps the most troublesome disincentive is the registry's function in administrative enforcement. The IPRS classifies buildings and parcels as "illegal," or as "restricted," where it can find no legal proof of ownership. It then prohibits the registration of future transactions until these classifications are lifted. In theory, this requirement provides the incentive for people to undertake legalization in order to realize the benefits of civil law protection and transactions. In reality, it means that transactions take place outside the registry and outside the civil law.

In the registries of some Western countries, data about administrative law classifications and restrictions can be included to ensure that future purchasers or other persons with interest in the property have the information. However, no prohibition is put on the ability to carry out future transactions, even if there is illegality. It is recognized that the correction of illegal conditions usually takes place when new money is put into the property as the result of a transaction. Thus, in Albania, the prohibition of future transactions involving illegal or restricted properties is doubly self-defeating. It blocks transactions, which can bring the new money needed for legalization, and encourages shadow transactions, which further compound the illegalities and undermine the integrity of the registry data.

PART 6. RECOMMENDATIONS AND CONCLUSIONS

The following recommendations will provide a basis for discussion and planning for follow-on activities of the IPRS, as well as possibilities for further support from USAID and other donors.

■ **Continue systematic First Registration.** Maintain the momentum of adding new properties to the IPRS to continue to strengthen its legitimacy. This will maintain its database and support the current trend of increasing use of the registry. Continue using the proven and effective methods of global contracting and quality control monitoring that ROI put into place. Require the Government of Albania's active participation in the form of in-kind contributions to the effort and a commitment to conserving donor resources.

■ **Pass new legislation to redefine the structure of the IPRS and its relation to all other pertinent judicial and administrative units.** The government must make an effort, not the IPRS acting alone, to consider and draft the necessary changes in legislation and regulatory policy and practice. This effort should be comprehensive, joining all the pertinent units, including the Ministry of Justice, the mapping and geodesy institutions, the chamber of notaries, territorial adjustment, and representatives of the municipal and provincial level entities that control property documentation. Update the proposed changes in law no. 7843 and accompany them with parallel changes in the civil code, the civil procedure code, the law "On Notary Practice," and the law "On City Planning." Consider new amendments to all these laws in the light of the new legislation "On Restitution of Property Rights to Former Owners" and the draft law "On Legalization and Regularization of Informal Zones." Without this coordinated effort, the various laws and administrative units will continue to work against each other.

■ **Bring together representatives of the major "user groups" for a discussion on new legal and regulatory provisions.** The associations of builders, real estate professionals, appraisers, real property lawyers, mortgage bankers, and land engineers/surveyors are the essential organizations. Without their participation, the proposals of the bureaucratic units will be impractical, biased against citizens and juridical persons, and will have no practical legitimacy. As the first priority, the IPRS should work with these groups to draft and adopt the regulations and instructions for setting up the system of "temporary registration" of unfinished buildings and pre-sale contracts. The amendments to the law "On Construction" of February 2004 authorize this new system, but the IPRS has not yet taken any steps to implement it.

■ **Clarify the internal delegation of authority within the IPRS.** Review the internal structure and operation of the IPRS district offices and issue a set of clear rules for the delegation of authorities to act on applications of different types. Front desk clerks, under appropriate supervision, should handle small, routine applications for such things as certificates of ownership and copies of registry documents. Explore methods of "free search" of the registry—through computer terminals available in the registry lobbies and on the Internet. District registrars and their deputies should devote more of their time to management, reviewing only complex applications. Clarify the division of responsibilities between the district offices and the central office of the IPRS. The central office should have no role in deciding questions related to any individual property unit. Discourage any efforts by the central office of the IPRS to create, control, and market a central data bank.

■ **Limit district registry office responsibilities to the intake of transaction documents and the output of registry information.** Remove all responsibilities imposed on the registry by other government units. This includes the requirement that the registry offices collect taxes and that the registrars impose restrictions on properties in order to enforce land planning and other laws and regulations.

■ **Encourage a close working relationship between the IPRS, the real estate professions, and the judiciary to develop methods of “automatic” registration of transactions.** When citizens and juridical persons engage in real property transactions, they should not be expected to carry the documents themselves to the registry offices for filing. This should take place as part of the professional services for the transactions (by the notary, lawyer, broker, appraiser, etc.). Similarly, when the courts or other administrative agencies issue orders or take other actions that change property ownership or subordinate rights, there should be a direct reference of these actions to the registry.

CONCLUSION

The Albania ROI project can point to a number of significant accomplishments:

- It added substantially to the number of properties registered in the IPRS.
- It successfully demonstrated an approach to systematic First Registration using the private sector and a performance-based “global contracting” methodology.
- It confronted the complex problems of registration in urban areas, and laid a foundation nationwide for continued systematic First Registration in the remaining urban zones.
- It improved the quality of the legal documentation and the geographic information turned over to the IPRS district registries as part of systematic First Registration.
- With limited success, ROI advocated for legal and regulatory reforms necessary to strengthen the IPRS as an institution and to strengthen the legal context in which property rights are defined and protected.
- ROI’s outreach activities, and the manner in which it conducted systematic First Registration, significantly elevated the awareness of property rights in general and property registration in particular, in the minds of the public at large, as well as stakeholder organizations and institutions.

Property rights is a cross-cutting development theme and seems fundamental to sustainable economic growth. Continued systematic First Registration, even in the absence of needed legal and regulatory reform—and even in the absence of needed institutional strengthening of the central office of the IPRS—meets important development goals in many ways. It improves transparency, fights corruption, strengthens public participation, mitigates conflict, and places investment resources into the hands of property owners. It attracts new foreign and local investment by securing long-term property rights and by protecting the investments in these properties. Continued systematic First Registration can provide the public awareness that leads to the political will necessary to bring about needed legal, regulatory, and institutional reforms.

Notably, the Millenium Challenge Corporation named Albania as a threshold country and is looking to USAID to lead the implementation of a Threshold Program. In its document "Threshold Country Program Guidance" [http://www.mca.gov/countries/threshold/threshold_guidance_en.pdf] it states, "The MCA is based on several key principles including a focus on poverty reduction, sustainable economic growth, political commitment, inclusiveness, accountability, and emphasis on results that will be reflected throughout the development and implementation of MCA programs."

Continued systematic First Registration, along with institutional strengthening and legal and regulatory reforms, could be an important component of the Threshold Program as well as a complement to USAID/Albania's overall strategic plan for Albania.